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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,562	04/08/2004	Phillip M. Braun	00216-638001	8663
26163	7590	08/15/2005	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			CHIN, RANDALL E	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/820,562

Applicant(s)

BRAUN ET AL.

Examiner

Randall Chin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-24 is/are allowed.
- 6) ☒ Claim(s) 25-27, 29 and 32-35 is/are rejected.
- 7) ☒ Claim(s) 28, 30, 31 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 04082004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Reissue Applications***

1. The original patent has not been surrendered nor is there a statement that the original patent is lost or misplaced.

### ***Claim Objections***

2. Claims 17 and 35 are objected to because of the following informalities:

Claim 17, the recitation that the elements in the second group are longer than the elements in the first group is not originally supported and thus constitutes new matter.

Claim 35, line 2, "the element" lacks proper antecedent basis

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 25, 29 and 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Germany 1, 210 409 (hereinafter '409).

Germany '409 discloses with respect to claim 25, an apparatus (Fig. 2) comprising a head 1 and a plurality of tufts of bristles extending from the head 1, each tuft of bristles being supported for rotation about only one axis, each tuft of bristles

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being rotatable independent of the other tuft of bristles. As for claim 25 reciting a "toothbrush" head, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Further, in the instant case, a "toothbrush" head imparts no particular shape or size to the head itself.

As for claim 29, viewing Fig. 5, each tuft 18 includes at its non-brushing end a bearing (Fig. 5) which is substantially cylindrical in shape in its major portion, each bearing being secured in its own hollow space within the head 16, each bearing allowing rotation of its respective tuft.

As for claim 32, a portion of the head (e.g., where the lead line for S points to in Fig. 2) would limit rotation of each tuft.

As for claim 33, the tufts could be rotated by contact with a portion of an oral cavity. Again, as stated above, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference

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as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

With respect to claim 34, Fig. 2 shows each tuft including at its non-brushing end a living hinge 5, each living hinge 5 being secured "partially within the head" (since hinge 5 is integral to head 1), each living hinge allowing rotation of its respective tuft.

As for claim 35, the axis about which each tuft is rotatable is substantially perpendicular to a long axis of the "element" (or the head 1).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Germany '409.

As for claims 26 and 27 reciting the range of rotation of each tuft being a range of rotation of about 60 degrees or about 30 degrees to either side of the vertical position, it should be noted that Fig. 1 of Germany '409 also teaches all of the claimed subject matter of claim 25. Moreover, viewing Fig. 1 of Germany '409, it appears the tufts are rotate about 60 degrees or about 30 degrees to either side of the vertical position. Further, the tufts are **capable of** rotating about 60 degrees or about 30 degrees to either side of the vertical position. Moreover, even assuming *arguendo* that the tufts do

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not rotate about 60 degrees or about 30 degrees to either side of the vertical position, one skilled in the art would find it obvious to choose such claimed range for the purpose of increasing/decreasing the belt's (i.e., head 1) flexibility.

***Allowable Subject Matter***

7. Claims 1-24 are allowed.

Claims 28, 30, 31 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, John Kim, can be reached at (571) 272-1142. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Chin



Randall Chin  
Primary Examiner  
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